

APPEAL NO. 020990  
FILED JUNE 10, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 11, 2002. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the first and second quarters and that the appellant (carrier) had not waived the right to contest the claimant's entitlement to SIBs for the second quarter. The hearing officer's decision on the carrier waiver issue has not been appealed and has become final pursuant to Section 410.169.

Citing several Appeals Panel decisions, the carrier appeals the SIBs issue, contending that a doctor's narrative report was only a conclusory statement and asserting that a functional capacity evaluation (FCE) was an "other record" which showed that the claimant had some ability to work. The claimant responds, urging affirmance.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and regulatory requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) through a total inability to work as set out in Rule 130.102(d)(4). The hearing officer's determination that the claimant's unemployment was a direct result of his impairment has not been appealed and will not be discussed further.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The parties stipulated that the qualifying period for the first quarter was from June 23 through September 21, 2001, and the qualifying period for the second quarter was from September 22 through December 21, 2001. The hearing officer commented that the 66-year-old claimant had "failed [lumbar] back surgery" and discussed in some detail two narrative reports, one dated November 19,<sup>1</sup> 2001, and the other dated February 18, 2002.<sup>2</sup> In

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<sup>1</sup>Not 18 as stated by the hearing officer.

<sup>2</sup>In addition, we note that there are two progress notes made during the qualifying periods in evidence.

addition, the hearing officer discussed in some detail an FCE performed November 8, 2001. The hearing officer's finding regarding compliance with Rule 130.102(d)(4) is not against the great weight and preponderance of the evidence.

The carrier cites a number of older SIBs cases which have largely been overcome with the adoption of Rule 130.102(d) and (e) effective January 31, 1999, and amended November 28, 1999. The carrier also points to the FCE as "an other" record which shows that the claimant is able to return to work and cites Texas Workers' Compensation Commission Appeal No. 001166, decided July 6, 2000, for proposition that "the trier of fact is not free . . . to engage in a simple weighing of all medical evidence when an inability to work is asserted." We agree with the proposition that a hearing officer should not simply reject such records as not credible without an explanation as to why they are not. See Texas Workers' Compensation Commission Appeal No. 002196, decided October 24, 2000, and Texas Workers' Compensation Commission Appeal No. 011145, decided July 3, 2001. In this case, the hearing officer discussed the FCE at some length and explained how it did not show that the claimant is able to return to work.

After review of the record before us and the complained-of determinations, we have concluded that there is sufficient support for the hearing officer's decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Roy L. Warren  
Appeals Judge